**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 1773 OF 2003**

Tukaram Sahadu Gade ...Petitioner

Versus

Shaila Tukaram Gade & Anr ...Respondents

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Mr. Rahul Oak i/b R.S.Datar, Advocate for Petitioner

Mr. V.B. Konde Deshmukh, A.P.P. for State.

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**CORAM: SMT. V.K. TAHILRAMANI, J.**

**DATED: 7TH OCTOBER, 2005**

**P. C.:-**

1. Heard the learned advocate for the petitioner.

2. The petitioner is the husband of respondent No.1. The respondent No.1-wife had filed an application for maintenance. The said application was allowed and maintenance of Rs.300/- p.m. came to be granted to the wife. Thereafter, the wife filed another application i.e. Cri. Misc. application No. 67 of 1996 for enhancement of maintenance amount from Rs.300/- p.m. The said application came to be allowed and by order dated 10.12.1997 and the learned Magistrate enhanced maintenance amount to Rs.350/- per month to the wife.

3. The wife preferred another application for enhancement of maintenance amount. She prayed the amount be enhanced from Rs.350/- to Rs.1500/- p.m. By order dated 17.09.2002, the learned Magistrate enhanced the amount to Rs.1500/- p.m. from the date of the order. Being aggrieved by the said order, the present petitioner preferred revision before the Sessions Court. By order dated 3.10.2003 the said revision came to be partly allowed. The order of the Magistrate enhancing the maintenance of Rs.1500/- p.m. came to be set aside and instead the petitioner-husband was ordered to pay an amount of Rs.1200/- p.m. to the wife from the date of the order of the Learned Magistrate i.e. 17.9.2002. Being aggrieved by the said order, this petition has been preferred.

4. The learned advocate for the petitioner has submitted that many facts were not taken into consideration by the Court when the maintenance amount came to be enhanced. It is his specific case that the fact that the petitioner was suffering from kidney stone and the fact that he has his old mother and two children who are dependant on him, was not taken into consideration. It was lastly submitted that the raise in salary was not properly considered.

5. On perusal of the judgment of the learned

Sessions Judge, it is seen that the learned Sessions Judge has taken into consideration all these facts i.e. the petitioner was suffering from kidney stone and that he has two sons and old mother and who are dependent on him and the fact that there was no increase in his salary from 1996. In the present case, it is seen that this petition for enhancement of maintenance amount from Rs.350/- to Rs.1500/- p.m. was filed four years after the last application. The learned Magistrate enhanced the amount from Rs.350/- to Rs.1500/-. This enhancement was to the tune of Rs.1150/-. The salary slip of the petitioner of July, 1997 (Exh.18) shows that he was getting salary of Rs.3491/-. His gross salary was shown as Rs.5683/- p.m. and the deductions were shown at Rs.2099/-. However, all these deductions are not permissible deductions except the amount of Rs.114+93=207/-. The other deductions are in the nature of repayment of loans and/or savings. As against this, the salary slip of the petitioner for the month of June, 2002 shows total salary of Rs.8983/- of which the permissible deductions amount to Rs.806/- only. On deducting Rs.806/- the petitioner would get an amount of Rs.8177/-. Thus, this shows that there is increase of Rs.2701/- in the salary of the petitioner. Besides the salary, the petitioner-husband has other income i.e. he holds land jointly with his brother on which sugar-cane

crop is grown. There is well in one of the said land. There is nothing on record to show that the wife has any source of income.

6. In view of all the above facts, the enhancement of maintenance amount from Rs.350/- to Rs.1200/- is just, legal and proper. No interference is called for. Writ petition is rejected.

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